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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,310

01/02/2004

Gerhard Lengeling

P3252US1 (60108-0097)

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04/01/2008

HICKMAN PALERMO TRUONG & BECKER LLP/Apple Inc.

2055 GATEWAY PLACE

SUITE 550

SAN JOSE, CA 95110-1083

EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

MAIL DATE

DELIVERY MODE

04/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/751,310	<b>Applicant(s)</b> LENGELING ET AL.	
	<b>Examiner</b> DAVID S. WARREN	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-22,24-26 and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,6-22,24,25 and 29-36 is/are allowed.
- 6) ☒ Claim(s) 26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by ACID <sup>TM</sup> (ACID User Manual, Sonic Foundry, Europe. 1999; hereinafter “ACID”). As stated in the previous Office Action, regarding claims 26 and 28, ACID discloses the use of sample data associated with an audio waveform (e.g., \*.wav, \*.aif, etc.), and data that sets forth specific synthesis treatment to be used for processing a given sound (e.g., the envelope data on page 54 is deemed to be data that sets forth a specific synthesis treatment for processing the sound).

### ***Allowable Subject Matter***

2. Claims 1, 2, 6 – 22, 24, 25, and 29 – 36 are allowed. Regarding independent claims 1 and 13, the Applicant has persuasively argued (and provided through amendment) that these claims now have patentable utility. Regarding independent

claims 22 and 25, the added limitation (to “override any synthesis treatment that the playback device would otherwise use for the given instrument”) is not shown in the prior art. Indeed, in using ACID, the playback device per se is without any synthesis treatment.

### ***Response to Arguments***

3. Regarding claims 26 and 28, Applicant's arguments filed December 18, 2007, have been fully considered but they are not persuasive. The Applicant is attempting to draw a distinction between a file and a folder and whether ACID stores audio data within the same file as data that sets forth synthesis treatment. First, the Applicant's argument stating that the "synthesis treatment is used as a normalizing component to ensure that a synthesized instrument or sound is accurately rendered regardless of what type of brand of synthesizer or player is used" is not persuasive. The specification provides a single mention of “synthesis treatment” (pg. 24, lines 5 – 7) and no definition of “a normalizing component.” Furthermore, the Applicant omitted the latter part of the sentence (i.e., pg. 24, lines 5 - 7) which states "by virtue of the fact that characteristics such as the envelope may be specifically (re)defined for each sound or instrument." As stated, ACID clearly shows control of envelopes (as Applicant has admitted, pg. 11, lines 10 and 11, in *Reply to Office Action*). The Examiner is defining "normalizing component" to be synonymous with "defining the envelope."

4. Second, the Applicant attempts to stress that, in ACID, the audio data is not stored in the same file but in the same folder. The Examiner still maintains that a folder is a file (i.e., a file that contains other files).
5. A cursory Internet search provides this definition (from Google, search “define: folder”):

Definitions of **folder** on the Web:

A **file** that contains other **files** for the purpose of ordering and structuring a hierarchy.  
[dev.hyperion.com/glossary/glossary\\_f.cfm](http://dev.hyperion.com/glossary/glossary_f.cfm) [Emphasis Added]

6. Therefore, the folder (i.e., the file) which holds the audio data and the project file, are deemed to be within the same file. The Applicant is encouraged to view definitions of “file” which, the Examiner believes, will also show to be synonymous with “folder.”

**Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID S. WARREN whose telephone number is (571)272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dsw  
/Lincoln Donovan/  
Supervisory Patent Examiner, Art Unit 2837

<b>Application Number</b> 	<b>Application/Control No.</b>	<b>Applicant(s)/Patent under Reexamination</b>	
	10/751,310	LENGELING ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID S. WARREN	2837	